

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5851 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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VIRA BHAGAT CO OP HSG SOCIETY LTD

Versus

THE SECRETARY, REVENUE DEPT. & ANR.

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Appearance:

Shri B.R. Shah, Senior Advocate, with Shri Bhargav Bhatt, Advocate, for the Petitioner

Shri M.R. Anand, Senior Counsel (Government Pleader, with Shri T.H. Sompura, Asst. Govt. Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/06/96

ORAL JUDGEMENT

The order passed by and on behalf of the State

Government on 22nd November 1993 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By its impugned order, the State Government has cancelled the exemption granted under sec. 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) by the order passed on 18th April 1992 with respect to one parcel of land bearing survey No. 54/2 in Town Planning Scheme No. 37 and bearing Final Plot No. 383 admeasuring 10560 square meters situated at Dani Limda within the urban agglomeration of Ahmedabad (the disputed land for convenience).

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the petitioner was granted exemption under sec. 20(1) of the Act with respect to the disputed land by the order passed on 18th April 1992 on certain terms and conditions. Its copy is at Annexure A to this petition. One condition required the petitioner to get the sale deed with respect to the disputed land executed within 9 months from its date. Another condition required the petitioner to submit within 3 months from the date of its order names and addresses of the allottees together with their affidavits showing that each allottee was to be given only 200 square meters of plot from the disputed land. Yet another condition required the petitioner to obtain what is popularly known as the N.A. permission. It appears that the petitioner could not produce the names and the addresses of the allottees together with their affidavits as required by one of the conditions attached to the order at Annexure A to this petition. Thereupon a show-cause notice came to be issued on 23rd July 1992 under sec. 20(2) of the Act calling upon the petitioner to show cause why the permission granted by the order at Annexure A to this petition should not be cancelled. It appears that in the meantime the petitioner had already taken steps for getting the N.A. permission obtained by the original owners of the disputed land. By the order passed on 16th January 1993, the City Deputy Collector at Ahmedabad granted the N.A. permission. Its copy is at Annexure B to this petition. The petitioner thereafter moved the State Government for extension of the time-limit by its application of 11th February 1993. Its copy is at Annexure C to this petition. It appears not to have filed any reply to the aforesaid show-cause notice under sec. 20(2) of the Act. Thereupon by the order passed by and on behalf of the State Government on 22nd November 1993, it cancelled the exemption granted by the order at Annexure A to this petition. Its copy is at Annexure D

to this petition. The petitioner thereupon moved the Government by addressing one representation to the Revenue Minister of the State Government on 1st December 1993 for review of the order at Annexure D to this petition. A copy of such representation is at Annexure E to this petition. It appears that in the meantime the petitioner had moved the Municipal Corporation of Ahmedabad for approval of the plans for construction and for grant of the necessary building permission. By the order passed on 24th April 1993, the local authority granted such building permission on certain terms and conditions. Its copy is at Annexure F to this petition. It appears that pursuant thereto certain construction in the disputed land has already been made and certain residential units have come up thereon. Learned Counsel Shri Shah for the petitioner states that some constructed residential units have been allotted to certain members and they have started residing therein. It appears that the petitioner's representation for review of the order at Annexure D to this petition was not considered. The petitioner has therefore moved this court under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition.

3. The question arising for consideration is whether the time-limit for furnishing the names and the addresses of the members of the society within 3 months from the date of the order is mandatory or directory. It may be mentioned at this stage that the order at Annexure A to this petition granting exemption under sec. 20(1) of the Act qua the disputed land contains several conditions. One condition is that the petitioner cannot allot more than 200 square meters of plot to any one member. Such condition has to be treated as mandatory. Similarly, another condition requires the petitioner to obtain the N.A. permission with respect to the disputed land. It has also to be treated as mandatory. One condition requires the petitioner to get the construction plans approved by and the building permission obtained from the local authority. This is also to be regarded as mandatory. However, the condition regarding getting the sale deed executed within a period of 9 months from the date of the order will have to be regarded as directory and not mandatory. The reason therefor is quite simple. There could be several unknown reasons which would come in the way of getting the sale deed executed between the parties. For example, some unknown person might claim interest in the disputed land and a litigation might be instituted. It is obvious that during the pendency of such litigation no sale document would ordinarily be executed even if the court does not grant any interim

relief thereagainst.

4. That brings me as to the nature of the condition regarding the requirement to furnish the names and the addresses of the members of the petitioner-society within 3 months from the date of the order at Annexure A to this petition coupled with the condition that minimum 50% members should belong to the scheduled caste, the scheduled tribe, Government servants or the nomadic tribe. That condition also requires the petitioner to furnish information regarding allotment of a plot of not more than 200 square meters to its members. At this stage the well-known principle of caveat emptor cannot be lost sight of. That requires every buyer of a movable as well as an immovable property to be cautious before buying it. He has to see that he buys a property (whether movable or immovable) with a clear title and it can be put to use for the purpose for which it is bought without any hitch or hindrance. It is obvious that a buyer desirous of constructing a house on a plot of land would be quite keen to see that the plot is put to non-agricultural use and its title is clear. That would apply with all the greater force if the buyer belongs to the scheduled caste or the scheduled tribe or the nomadic tribe or falls in the category of government servants. It is possible that if no N.A. permission is obtained with respect to a parcel of land, a person might be hesitant in becoming a member of the society owning such land and offering small plots therefrom to its members. A person might equally be hesitant in becoming a member of such society if it does not have a document of title with it. As pointed out hereinabove, there could be diverse reasons for not getting executed a document of title. It is equally possible that an application for the N.A. permission would take some unduly long time for its disposal. As transpiring from the order at Annexure B to this petition, the N.A. permission could be obtained as late as on 16th January 1993 though the application for the purpose was made about 7 1/2 months earlier on 1st June 1992. In this view of the matter, there is no escape from the conclusion that the condition regarding furnishing the names and addresses of the members of the petitioner-society stipulating that 50% persons should be from the scheduled caste, scheduled tribe, the nomadic tribe or government servants should be held to be directory and not mandatory. It would mean that the petitioner could furnish the required information within a reasonable time and not within the stipulated time-limit. Non-compliance with such directory condition should not have resulted in cancellation of the exemption order at Annexure A to this

petition.

5. It may be mentioned that the impugned order at Annexure D to this petition refers to the construction activity undertaken by the petitioner-society without obtaining prior permission from the State Government. Nowhere in the order at Annexure A to this petition is stipulated the requirement of any prior government permission for construction of houses for its members. What is stipulated therein is the building permission from the local authority. The petitioner has already obtained such building permission as transpiring from the document at Annexure F to this petition. Non-obtaining of any prior government permission for construction could not have weighed with the author of the order at Annexure D to this petition for cancellation of the exemption granted by the order at Annexure A to this petition qua the disputed land.

6. It appears that the petitioners have produced various affidavits from members on the record of this petition. Their copies were supplied to the Assistant Government Pleader. Some time was given for verification of such affidavits. The petitioner however wants extension of the time-limit for complying with the necessary conditions attached to the order of exemption at Annexure A to this petition. I think its prayer is quite reasonable and the necessary extension of time deserves to be granted to it for the purpose. It is however clarified that such grant of extension of time would not preclude the State Government from cancelling the order at Annexure A to this petition under sec. 20(2) of the Act if any of the mandatory conditions are not complied with or any of the directory conditions are not complied with within reasonable time. However, the impugned order at Annexure D to this petition cannot be sustained in law as the exemption granted by the order at Annexure A to this petition is cancelled thereby on the ground of breach of a directory condition for which suitable extension could have been granted.

7. It may be clarified at this stage that in the reply affidavit it is stated on behalf of the State Government that the review application made by the petitioner could not be considered in view of the binding ruling of the Supreme Court in the case of S. Vasudeva v. The State of Karnataka and others reported in AIR 1994 SC 923. The aforesaid ruling of the Supreme Court has been overruled by the recent ruling of the Supreme Court in the case of T.R. Thandur v. Union of India and others reported in JT 1996(4) SC 14. In that view of the

matter, there is no impediment against grant of extension of time to the petitioner for complying with the conditions attached to the exemption order at Annexure A to this petition.

8. Before parting with the judgment, I think I owe one clarification. Ordinarily my business would not include entertaining this petition for final hearing. However, it transpires from the order passed by the learned Acting Chief Justice on 6th May 1995 below the note submitted by the Joint Registrar in this case for placement of this matter for final hearing on account of non-availability of the court taking up such final hearing matters. The learned Acting Chief Justice has directed this petition to be placed before this Court for the purpose of final hearing. In that view of the matter, this matter has been listed on the board of this court as a specially assigned matter. I have therefore thought it fit to entertain this petition as a specially assigned matter.

9. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 22nd November 1993 at Annexure D to this petition is quashed and set aside. The time-limit for complying with the relevant conditions attached to the order at Annexure A to this petition is extended till 31st August 1996 except with respect to completion of the construction work within 2 years from its date. The construction work is ordered to be completed on or before 30th September 1997. Rule is accordingly made absolute with no order as to costs.

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